

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**RUAN TRANSPORT CORPORATION**

**Employer**

**and**

**TEAMSTERS LOCAL 705, AFFILIATED  
WITH THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**Case 13-RC-21909**

**Petitioner**

**and**

**TEAMSTERS LOCAL 710, AFFILIATED  
WITH THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**Intervenor**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on February 16, 2010, before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.<sup>1</sup>

**I. Issues**

The Employer, Ruan Transport Corporation (“Ruan”), contends that a contract bar exists to the processing of a petition filed by Teamsters Local 705 to represent certain drivers and warehouse spotters of the Employer, based upon Ruan’s alleged collective-bargaining agreement with Teamsters Local 710 covering those employees.

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<sup>1</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

## **II. Decision**

Based upon the Board's modifications of the contract bar doctrine in *Dana Corp.*, 351 NLRB 434 (2007), any contract between Ruan and Teamsters Local 710 does not bar the petition in this case, due to the failure of those parties to meet the *Dana* notice and window-period requirements. Although Ruan and Teamsters Local 710 executed a voluntary recognition agreement on January 13, 2010, the parties did not provide adequate notice to employees of the recognition and the employees' right to file a Board election petition within 45 days of that recognition. Moreover, Teamsters Local 705 filed its petition herein on February 1, 2010, within 45 days of the execution of the voluntary recognition agreement. Furthermore, the documents relied on by the Employer and Local 710 to bar the petition are not adequate to satisfy the Board's contract bar requirements, and there is insufficient evidence that Local 710 enjoyed majority support at the time of recognition.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit:

All full-time and regular part-time truck drivers and warehouse spotter/drivers employed by the Employer based at the Castle Metal facility currently located at 3400 North Wolf Road in Franklin Park, Illinois, excluding all dispatchers, supervisors, clerical, security personnel, and professionals as defined in the Act.<sup>2</sup>

## **III. Statement of Facts**

Ruan is engaged in the business of truck transportation through contract carriage arrangements whereby the Employer handles all product transportation needs for each of its customers. On December 21, 2009, Ruan obtained an account for A.M. Castle to handle its transportation needs in the Chicago metropolitan area. Pursuant to its agreement with A.M. Castle, Ruan was scheduled to begin service on February 1, 2010. However, A.M. Castle also advised Ruan that it wanted the company to be ready to take over prior to that date, if necessary, due to the precarious financial condition of the company then providing A.M. Castle with transportation services.

After being advised of this, Ruan's Vice President of Labor Relations George Kent Havens called Gary Abraham, a business agent for Intervenor Teamsters Local 710, on December 22, 2009. Ruan had an existing collective-bargaining agreement covering its employees who serviced an account with Marmon Keystone, a steel company, so Havens requested that Abraham provide him with qualified drivers from the Local's hiring hall whom Ruan could use to furnish the transportation needs for A.M. Castle. A day or two thereafter, Abraham provided Havens with the names of five drivers, who were hired by Ruan the first week of January 2010 and were scheduled to begin employment on February 1, 2010.<sup>3</sup> Abraham also requested that Ruan voluntarily recognize Teamsters Local 710 as the drivers' collective-

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<sup>2</sup> No representative of Intervenor Teamsters Local 710 appeared at the hearing. Ruan and Teamsters Local 705 stipulated that this was the appropriate unit.

<sup>3</sup> All dates hereafter are 2010 unless otherwise indicated.

bargaining representative, given that the drivers were members of that local and had been provided to Ruan out of the local's hiring hall. Havens agreed to do so.

Ruan and Teamsters Local 710 immediately began negotiations for a collective-bargaining agreement covering the A.M. Castle drivers. Following a number of telephone calls, Havens sent the Union a written contract proposal at some point prior to January 12. The three-year contract proposal was based on the existing contract between the Employer and Local 710 covering the employees who serviced the Marmon Keystone account. The Employer's proposal contained 25 articles covering a full array of topics, including wages, vacation and other leave benefits, health & welfare and savings plans, seniority, and a grievance and arbitration procedure. The Employer's wage proposal was included in an appendix to the draft contract.

The parties then met on January 12 at a local Chicago hotel, with Havens and Abraham serving as the chief negotiators for the Employer and the Local, respectively. The Local provided a one-page, handwritten counterproposal containing suggested changes to a number of the proposed articles, including wages, holidays, seniority, health & welfare and savings plans, and the grievance and arbitration procedure. The two sides discussed these issues at length, with Havens making notes in the margins of the Local's counterproposal to indicate where the Employer had agreed and where the parties' disagreed, following the initial caucus of the Employer's representatives. At some point during the negotiation session that day, the parties resolved all of the initial disagreements, shook hands, and agreed that they had a deal. The contract, as Havens understood it, was the Employer's initial proposal as modified by the notes contained on the Local's handwritten counterproposal.

During that same January 12 meeting, Teamsters Local 710 requested that Ruan sign a recognition agreement. That agreement stated: "THE EMPLOYER SUBSCRIBED BELOW HEREBY RECOGNIZES LOCAL UNION 710 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS AS THE SOLE AND EXCLUSIVE BARGAINING AGENT ON BEHALF OF IT'S (sic) FULL-TIME DRIVER EMPLOYEES EMPLOYED AT THE EMPLOYER'S FACILITY LOCATED IN FRANKLIN PARK, ILLINOIS." Abraham and Ruan Vice President Andrew Bounds executed the recognition agreement on that date. Ruan did so based upon its hiring of the five drivers from the Local's hiring hall. In addition, the job applications for those five drivers indicated that they were members of Teamsters Local 710. However, the Local did not furnish Ruan with any authorization cards or other proof of majority status at this meeting.

The next day, January 13, Havens sent a letter to Abraham stating the following:

Per our meeting yesterday, January 12, 2010, at the Crown Plaza Hotel in Chicago, it is the understanding of the parties that both Ruan Transport Corporation and Teamsters Local 710 agree to all wages, terms and conditions of the negotiated Collective Bargaining Agreement for the company's business at A.M. Castle Metals.

Havens requested that Abraham indicate his approval of that understanding by signing a signature line on the bottom of the letter and returning a copy of the executed letter. Havens also indicated he would prepare a final collective-bargaining agreement with the changes for signature once he received the executed letter from Teamsters Local 710.

During a call between Havens and Abraham on January 17, Havens testified that Abraham told him employees had ratified the proposed contract on that date and that he had signed Havens's letter dated January 13. The letter introduced into evidence at the hearing was signed, but not dated, by both Havens and Abraham.

The Petitioner in this case, Teamsters Local 705, filed its petition seeking to represent the drivers at Ruan servicing the A.M. Castle account on February 1. On that same date, Ruan began providing transportation services to A.M. Castle as scheduled and implemented the terms of its agreement with Teamsters Local 710. In addition to the five drivers previously hired, Ruan brought on more drivers on that date representing the "bulk of the workforce," although the exact number was not identified. As of February 16, the date of the hearing in this case, Ruan employed 15 drivers servicing the A.M. Castle account. On February 3, Havens sent Employer-executed copies of the complete collective bargaining agreement to Abraham. That written contract contained no changes from the agreement reached by the parties on January 12. Teamsters Local 710 executed the contract and sent it to Ruan's Iowa office, but it is not clear from the record the exact date that the Local signed off on the agreement.

#### **IV. Analysis**

In *Dana Corp.*, supra, the Board modified its recognition bar doctrine to limit the circumstances in which elections were barred following an employer's grant of voluntary recognition to a union. In particular, no bar to an election exists following the grant of voluntary recognition unless (a) affected unit employees receive adequate notice of the recognition and of their opportunity to file a Board election petition within 45 days, and (b) 45 days pass from the date of notice without the filing of a validly-supported petition. 351 NLRB at 441. The Board also applied this holding to its contract bar doctrine, such that a collective-bargaining agreement executed on or after the date of voluntary recognition will bar a decertification or rival union petition only where notice of the voluntary recognition has been given to employees and 45 days have passed without a valid petition being filed. *Id.* at 435. To insure these new requirements were met, the Board instructed an employer and/or union that is party to a voluntary recognition agreement to promptly notify the appropriate Regional Office of the Board in writing of the grant of voluntary recognition. *Id.* at 443.

Assuming *arguendo* that Ruan and Teamsters Local 710 have a contract which otherwise would act as a bar to an election, the contract does not bar the processing of the petition of Teamsters Local 705 in this case because the parties did not satisfy the *Dana* notice and window-period requirements. At the hearing, the Employer presented no evidence that either it or Teamsters Local 710 notified Region 13 of the grant of voluntary recognition, a predicate to the employees receiving adequate notice of that recognition and of their right to file a petition during

the 45-day window period.<sup>4</sup> Furthermore, even if notification had been received and notice provided, rival union Teamsters Local 705 filed its petition on February 1, or 20 days after the grant of voluntary recognition. Thus, neither *Dana* condition was met. The petition in this case may be processed and an election conducted on that basis alone.

Other factors support the conclusion that an election is appropriate in this case. First, the purported collective-bargaining agreement between the parties does not satisfy the Board's requirements to act as a bar. To serve as a bar to an election, an agreement must be signed by the parties prior to the filing of the petition and contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. See, e.g., *Seton Medical Center*, 317 NLRB 87 (1995) (finding no contract bar where parties had no signed document showing the totality of their agreement and that their negotiations were concluded); *Appalachian Shale Products*, 121 NLRB 1160 (1958). The agreement need not be embodied in a formal document and can be demonstrated by an informal document, such as a written proposal and a written acceptance, where the document contains substantial terms and conditions of employment and is signed by the parties. *Waste Mgmt. of Maryland*, 338 NLRB 1002 (2003); *Georgia Purchasing*, 230 NLRB 1174 (1977). In this case, no dispute exists that Ruan and Teamsters Local 710 did not execute the final collective-bargaining agreement containing all terms and conditions of employment until sometime on or after February 3, or two days after Teamsters Local 705 filed its petition.

In an attempt to satisfy the signature requirement, the company relies upon the letter it sent to Teamsters Local 710 on January 13, 2010. However, the four corners of that document do not make clear what terms and conditions of employment the parties agreed to. Havens letter referenced the January 12 negotiations and indicated that the parties had agreed to the "negotiated Collective Bargaining Agreement," without specifically stating Havens' understanding that the contract constituted the company's initial written proposal as modified by the notes contained on the local's handwritten counterproposal. In addition, a review of Teamsters Local 710's counterproposal and the notes contained therein does not make clear what exactly the parties had agreed to. Thus, the January 13 letter, although executed by both parties prior to the February 1 petition filing date, does not satisfy the Board's signature requirement because it does not spell out the contract's specific terms or reference other documents that clearly do so. *Waste Mgmt.*, supra at 1003 (finding signature requirement not satisfied where parties' exchange of written materials created confusion as to the terms of the alleged contract and noting that inquiry is limited to the plain text of the documents relied upon); *Seton Medical*, supra at 87 (even though parties' initialed their tentative agreements, no contract bar found where a signed document reflecting the totality of the parties' agreement did not exist). Ruan's reliance on the Board's decision in *Georgia Purchasing* is misplaced because the specific legal question presented in that case was whether minor variations in the final written contract between the parties were sufficient to negate the effectiveness of an earlier agreement reflected in telegram exchanges between the parties which otherwise satisfied the Board's *Appalachian Shale* requirements.

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<sup>4</sup> Subsequent to the hearing, the Region confirmed through a search of all its database that neither party had notified the Region of the January 12, 2010, grant of voluntary recognition.

Second, the validity of the company's grant of voluntary recognition to Teamsters Local 710 is in doubt. Voluntary recognition of a union is appropriate where the union presents "convincing evidence of union support," typically but not always "possession of cards signed by a majority of the employees authorizing the union to represent them for collective-bargaining purposes." *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 89 S.Ct. 1918 (1969); see also *Terracon, Inc.*, 339 NLRB 221, 223 (2003) (stating that the Board will find an employer voluntarily recognized a union when there is a clear and unequivocal agreement by the employer to do so on proof of majority status, and the union's majority status has been demonstrated); *Nantucket Fish Co.*, 309 NLRB 794, 795 (1992). Union membership, standing alone, is not always an accurate barometer of union support. See *International Union of Operating Engineers, Local 18*, 291 NLRB 797, 800 (1988) (adopting ALJ decision which concluded that Section 8(f) relationship could not be converted to Section 9(a) relationship based upon the fact that, like this case, the employer obtained its employees through the union's hiring hall and employees were union members, without other showing of majority status).

In this case, the parties' voluntary recognition agreement makes no reference to Teamsters Local 710 offering or showing proof to Ruan of its majority status. In fact, Employer Vice President of Labor Relations Kent Havens admitted that he received no evidence of Local 710's majority support before granting recognition. Instead, Havens relied upon the fact that the Employer's five initial unit employees were hired through the local's hiring hall and indicated on their job applications that they were Local 710 members as proof of the Local's majority status when it was voluntarily recognized. However, as shown above, union membership or referral from a hiring hall, by itself, is insufficient to demonstrate majority support. An individual's decision to become a member of a union does not, per se, establish that the individual wishes to be represented by that union at a particular employer.

Finally, directing an election in this case furthers the ultimate purpose of the contract bar doctrine, which is to achieve a reasonable balance between the frequently conflicting aims of industrial stability and employees' freedom of choice. *Appalachian Shale*, 121 NLRB at 1161. The five Ruan drivers initially hired to service the A.M. Castle account did not sign authorization cards or otherwise explicitly indicate their desire to be represented by Teamsters Local 710 prior to the voluntary recognition and execution of a contract. In the interim, Ruan hired 10 additional drivers. Ordering the election here will give the full complement of drivers the opportunity to freely express their choice as to whether they wish to be represented by Local 705 or Local 710 of the Teamsters, or neither union.<sup>5</sup> On the flip side, the election will not disrupt industrial stability, because Ruan and Teamsters Local 710 do not have a long-term relationship with respect to the drivers servicing the A.M. Castle account. Indeed, those drivers have been working for Ruan for only about four weeks at this time. Thus, proceeding to an election in this case is appropriate.<sup>6</sup>

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<sup>5</sup> Because Teamsters Local 710 failed to appear at the hearing and articulate its positions, including whether it wished to participate in any directed election involving this bargaining unit, the Region will require Teamsters Local 710 to submit the appropriate showing of interest for an intervenor within 7 days of the date of the issuance of this decision in order to be placed on the election ballot.

<sup>6</sup> The Employer's other legal arguments in its post-hearing brief do not alter this conclusion. First, the Employer's reference to Board doctrine concerning the appropriateness of voluntary recognition when two rival unions are conducting simultaneous organizing campaigns does not apply to this case, since no evidence was presented that Teamsters Local 705 was actively organizing drivers when Ruan agreed to voluntarily recognize Teamsters Local

## V. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local 705, Affiliated with the International Brotherhood of Teamsters or Teamsters Local 710, Affiliated with the International Brotherhood of Teamsters, or no union **NOTE: Teamsters Local 710 must submit an appropriate showing of interest to the Regional Office within 7 days of the date of issuance of this decision in order to appear on the ballot.** The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses

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710. (Although not clear from the record, it appears from the Employer's brief that the 10 drivers who Ruan hired on February 1 worked for the company which previously serviced the A.M. Castle account and were represented there by Teamsters Local 705.) Second, the Employer's argument that its grant of voluntary recognition to Teamsters Local 710 was not premature because Ruan did not employ a substantial and representative workforce at that time is irrelevant. In *General Extrusion Co.*, 121 NLRB 1165, 1167 (1958), the Board held that a contract would not bar an election if executed 1) before any employees had been hired, or 2) prior to a substantial increase in personnel, quantified as an increase of 70 percent or more. Even assuming this exception to the contract bar doctrine applies here, it does not establish that the alleged agreement otherwise serves as a bar to the election in this case.

of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **March 12, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, [www.nlrb.gov](http://www.nlrb.gov),<sup>7</sup> by mail, or by facsimile transmission at 312-886-1341. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **VI. Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by March 19, 2010. The request may be filed electronically through E-Gov on the Agency's website, [www.nlrb.gov](http://www.nlrb.gov),<sup>8</sup> but may not be filed by facsimile.

DATED at Chicago, Illinois this 5<sup>th</sup> day of March, 2010.

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<sup>7</sup> To file the eligibility list electronically, go to [www.nlrb.gov](http://www.nlrb.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

<sup>8</sup> To file the request for review electronically, go to [www.nlrb.gov](http://www.nlrb.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, [www.nlrb.gov](http://www.nlrb.gov).



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CATS Bars to Election - Contract

Blue Book 347-4040-1720-5075; 347-4040-1745

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